

47 TALLY OF BALLOTS: Regulations Section 2422.25(a) provides that at the conclusion of the election, the Regional Director will tally the ballots. The agent in charge of the election acts on the Regional Director's behalf. The Regional Director does not attend the count as s/he rules on any objections that may be filed regarding conduct occurring at the count and on any determinative challenged ballots the parties are unable to resolve at the count.

47.1 Valid ballots cast: Representation is determined by the majority of the valid ballots cast [§ 2422.25(c)]. A majority is determined on the basis of the valid votes cast and not on the basis of those eligible to vote. There is no requirement that a specific percentage or number of eligible voters cast ballots in order for an election to be valid. See *U.S. Department of the Interior, Bureau of Indian Affairs, Rosebud, South Dakota*, 34 FLRA 67 (1989) [CHM 28.1](#).

This section concerns procedures for resolving challenged ballots and tallying ballots. The procedures are equally applicable to manual, mail or mixed mail/manual ballot elections.

47.2 Designating the time and place for the tally: Item #13 of the election agreement (FLRA Form 33) and Item #11 of the election agreement for unit consolidation elections (FLRA Form 34) specifies the time and place for tallying the ballots ([CHM 28.27](#)). In most instances, the count is conducted in the same place and on the same date as the election is held. However, in circumstances where the voting places are widely dispersed, the parties may have to allow additional time for the return of the ballots by mail or by the agent.

The count cannot begin until all ballot boxes have been collected. If voting hours have been long and arduous and the count is expected to be drawn out, the parties may agree in the Election Agreement to allow a rest period between the close of the polls and the count. Where there is an intervening interval, the agent is responsible for safeguarding the ballot box(es) and letting the parties know that the ballot box(es) is (are) safe.

The place for tallying the ballots is large enough to accommodate the representatives of the parties and to provide ample working area for handling ballot boxes and tallying the ballots. In large elections, separate tables are set up to handle elections involving more than 1000 voters. A team of one caller, two "unfolders" (all agents) can tally approximately 1000 ballots an hour.

NOTE: *If the Authority orders the ballots impounded, see [CHM 55.2](#).*

47.3 Arranging the layout: All activities concerned with the handling of the ballots are contained within an enclosed area. For example, by using a U-shaped table configuration, the entire tallying procedure, from opening the box(es) to issuing the Tally of Ballots, can be conducted inside this area and be totally separated from spectators. The sealed ballot box(es) can also be stored inside the area, under the continuous observation of the observers seated around the table.

47.4 Persons present in the room: The actual participants in the count are the agent(s) and official observers.

Representatives of the parties may also be present but may not participate in the process. In large or hotly contested elections, the agent may be asked to allow the press to observe or record the count. Clearance is obtained from the Office of the General Counsel before allowing the press into the area.

47.5 Who conducts the tally: Agents are the only persons permitted to tally the ballots. Observers are designated to watch the count and ensure its accuracy.

47.6 Pre-tally resolution of challenged ballots: The agent makes every effort to resolve challenged ballots before the ballots are tallied in accordance with the procedures outlined in CHM 47.7. This section discusses basic policy considerations regarding resolving challenged ballots. A challenged ballot is considered a valid ballot cast, and the parties agree either to “resolve” the challenge or to leave the challenge “unresolved” prior to counting the ballots (before the tally).

Disposition of challenged ballots requires the agreement of all of the parties to the election. Pre-tally discussions concerning challenged ballots often set the tone for conduct of the tally. The agent discusses the procedures outlined in this manual for conducting the count including:

- a. roles of the Authority agent(s), observers and party representatives;
- b. why the challenged ballots are resolved first, the procedure for “resolving” them, and the potential consequences of not resolving them;
- c. the tallying procedure and responsibilities of the agent(s), parties and their observers;
- d. spoiled ballots;
- e. tallying procedures and completion of the certification of the tally; and if necessary,
- f. regulatory requirements for filing objections (citing to regulation).

47.6.1 Role of agent: The agent:

- a. Explains that he/she has no authority to make any ruling as to the eligibility of any voter whose ballot has been challenged.
- b. Makes sure parties understand consequences of their agreements.
- c. Takes efforts to resolve all outstanding challenges and avoid future inclusion/exclusion questions.
- d. Takes an active role setting out case law and helps parties apply that law, including suggesting inclusions/exclusions. Suggests that each party discuss the reasons for making their own challenges as each is addressed.
- e. Raises with the parties whether a particular position is eligible or ineligible for the unit (regardless of the parties' agreement) when the agent has independent knowledge that brings into question the status.

If the agent's questions (based on face of the list or independent knowledge) are not resolved to the satisfaction of the agent, the agent reports to the RD who can decide to approve the parties' agreed upon list or hold a hearing.

The fewer the number of unresolved challenged ballots remaining at the count, the less likely that the challenged ballots are determinative of the outcome of the election.

47.6.2 Consequences of the parties' agreement: The agent is responsible for ensuring that the parties understand the consequences of their agreement. The parties' agreement on challenged ballots is binding unless:

- a. If the parties agree the position is ineligible, the position stays ineligible unless: i) there are changed circumstances, or ii) the position(s) should have been included in the first instance and constitutes a residual unit. *FTC II*, 35 FLRA 576 (1990).
- b. If the parties agree that the position is eligible for inclusion in the unit, the position remains eligible unless: i) there are changed circumstances; or ii) the position(s) was ineligible in the first instance based on 5 U.S.C. 7112(b)(1) through (7) statutory exclusions. See

U.S. Department of the Army, U.S. Army Law Enforcement Command Pacific, Fort Shafter, Hawaii, 53 FLRA 1602 (1998) (the parties improperly agreed to include positions that were not in conformance with the Statute and were subject to statutory exclusions). (See [CHM 28.18.3.5](#).)

NOTE:

1. ***The agent may raise certain questions with the parties to obtain factual information concerning a challenged voter. If the agent's questions are not resolved to the agent's satisfaction (based on independent knowledge), the agent checks with the Regional Director before allowing the parties to resolve the challenge.***
2. ***If the parties and the agent are unable to resolve the challenged ballot(s) before the tally of the ballots, see [CHM 47.18](#) for a discussion on "post-tally party resolution" of determinative challenged ballots.***
3. ***If post-tally, the parties are unable to resolve the determinative challenges pursuant to CHM 47.18, the determinative challenged ballots are impounded and preserved until a determination is made, if necessary, by the Regional Director [§ 2422.24(b)]. See [CHM 49](#).***

a. Procedure:

- 47.7 Opening the ballot boxes:** All ballot boxes are opened at the same time by the agent(s). Challenged ballot envelopes are removed and handed to the agent in charge or placed in a pile by the agent opening the boxes. The other ballots remain in the box. In large elections where the ballot boxes are filled, it is easier to empty the contents of the box on a table so the agent can locate the challenged ballot envelopes. See [CHM 47.8](#) for instructions on emptying the ballot box(es).
- 47.7.1 Separating the challenged ballots by voting groups:** The challenged ballot envelope reflects the reason for the challenge. In elections involving multiple voting groups, the information on the challenged ballot envelope usually identifies the voter's voting group. In cases involving multiple voting groups, the challenged ballots are separated by voting groups. This process is used because if the challenges in the first voting group are determinative, the ballots in the second voting group cannot be tallied until the challenged

ballots from the first voting group are resolved ([CHM 47.17.2](#)).

47.7.3 Conferring about the challenged ballots: At a **manual ballot count**, an authorized representative for each of the parties, rather than an observer, confers with the agent about challenged ballots, unless the observer has been designated to act for the party. If the election is conducted by **mail ballot**, and the parties do not intend to be present for the count, at the election agreement conference the agent discusses procedures for making the parties available by telephone at the count to afford the party an opportunity to challenge an employee whose ballot has been returned. See also [CHM 44.4](#).

The following procedures apply to resolving challenged ballots in either a manual or mail ballot election. These procedures apply to ballots challenged by the parties and the agent. Note that ballots cast under the “Absentee Ballot Procedure” are considered challenged ballots to ensure that employees who vote by absentee do not also appear at the polls to vote.

- a. Each challenge is handled separately. The agent calls out the name of the challenged voter and states the reason for the challenge. Following the discussion, the challenging party may withdraw his/her position on the basis of discussion with the agent or other parties. It is important that the activity representative be prepared to discuss the personnel records of any employees who have been challenged based on eligibility to vote.
- b. Each challenged ballot envelope is annotated to reflect whether it was resolved or remains unresolved. A short explanation is also written on the envelope and the party representatives sign or initial the envelope signifying its status.
 - (i) If the parties agree that the voter is eligible, the challenged ballot envelope is marked “resolved - eligible,” with an explanation. Each party signs or initials the envelope signifying its resolution. The outer challenged ballot envelope is removed and preserved. The secret ballot envelope is not opened until all of the challenged ballots are declared “resolved” or “unresolved” (see [CHM 47.7.4](#)).
 - (ii) If the parties agree that the voter is ineligible, the challenged ballot envelope is marked “resolved - ineligible” and the reason noted (e.g., “resolved - ineligible - supervisor”). Each party signs or initials the envelope signifying its resolution. These unopened envelopes are

preserved and become part of the election records.

- (iii) If the parties are unable to resolve the status of a challenged ballot, the envelope is marked “unresolved,” with an explanation of the unresolved issue. Each party signs or initials the envelope, signifying that the challenge is unresolved. **Unresolved challenged ballots are recorded on the tally of ballots on the line titled “challenged ballots.”** The Tally of Ballots reflects whether the unresolved challenged ballots are determinative of the outcome of the election. Thereafter, the region investigates each unresolved challenged ballot, ([CHM 49](#)) and the Regional Director issues his/her decision in a Decision and Order ([CHM 53](#)).

c. Examples:

- (i) In cases where the employee's name was not on the list, the personnel or payroll information should reflect when the employee was hired, promoted, the job classification, etc., or any other information that may clarify why the name was not on the list. If the records reflect, and the parties agree, that the omission of the name was inadvertent, and that the voter in question is eligible in all respects, the challenge is “resolved - eligible.” All parties initial the envelope and note on the envelope that the omission was inadvertent. The envelope is opened and the secret ballot envelope is set aside until all of the resolved challenged ballot envelopes are opened.
- (ii) In cases where the employee voted at the wrong site in a multiple poll election, the name of the voter is located on the correct eligibility list and any other site list. If the lists reflect that the employee voted only once, and as a challenged ballot, the challenged is “resolved - eligible,” the parties initial or sign the envelope, provide an explanation and the ballot is tallied.
- (iii) In cases where a voter's name was marked off the eligibility list and the voter claims that s/he never voted, the parties may agree that an error was made and to tally the ballot. In such cases, the envelope is marked “resolved - eligible” with an explanation. The parties may also agree that the

voter is ineligible solely on the ground that the name of the voter was marked off the list as having voted. In such cases, the envelope is marked “resolved - ineligible” with an explanation. Absent agreement by the parties as to eligibility, the ballot remains “unresolved,” is impounded and is included in the tally of ballots as an unresolved challenged ballot.

- (iv) A challenged ballot is resolved by the parties as having been cast by an ineligible voter. The challenge is “resolved - ineligible” and the reason is provided. **NOTE: the ballot is not considered a “void” ballot, but a resolved challenged ballot; and it is not entered on the tally of ballots.**
- (v) An observer challenges the ballot of an employee who was acting as a supervisor on the day of the election. The parties are unable to resolve the voter’s eligibility and the challenged ballot envelope is marked “unresolved.” The parties initial the envelope, note the reasons for their failure to reach agreement and it is impounded. It is counted on the tally as an “unresolved challenged ballot.” See [CHM 47.7.4](#).

47.7.4 Disposition of challenged ballot materials: Before proceeding with the tally of ballots, the agent ensures that all resolved and unresolved challenged ballots are accounted for.

- a. The *unresolved challenged ballot envelopes* are designated as “unresolved,” the reason is noted, and the parties initial the envelope. **The total number of unresolved challenged ballots is recorded on the appropriate tally form.** These ballots are secured by the agent. Regardless of the outcome of the election, they are maintained as part of the election materials until after the Regional Director issues an appropriate certification.
- b. The *“resolved - eligible” challenged ballot envelopes* are opened; the outer envelope is secured with the other election materials, and the secret ballot envelopes are commingled and then opened. The ballot that is taken from the secret ballot envelope is not unfolded, but commingled with the other folded ballots from the ballot box. The empty secret ballot envelopes are also retained with the election materials.

- c. The “resolved - ineligible” challenged ballot envelopes are secured with the other election supplies and taken back to the Regional Office unopened.

NOTE: When opening challenged ballot envelopes, if the voter did not seal the ballot in the secret ballot envelope, the agent states that the ballot will be counted unless any party objects. If a party objects, the ballot is treated as an unresolved challenged ballot (see [CHM 43.1.4](#) for a similar discussion regarding returned mail ballots).

47.8 Tallying the ballots:

47.8.1 Removal of ballots from ballot box: The ballots are removed from the box before the tally begins. If there are observers present, the ballots are removed in their presence. Before any ballot box is opened, the observers are shown the seal over the slot to confirm that the boxes were not tampered with. In an election involving two or more polling places, the ballots from the separate ballot boxes are commingled before being unfolded. After all the ballots have been removed from the ballot box(es), the inside of the ballot box(es) is (are) shown to the observers. Once the observers are assured that there are no ballots remaining in the box, the box is broken down and flattened.

47.8.2 Mechanics of tallying: There are two methods of tallying ballots. The informal method is usually used in two-party elections, the formal method is used in multi-party elections. The agent in charge of the election elects which method to use, but it is suggested that the agent use the formal method when the election is hotly contested.

47.8.2.1 Preliminary announcements and instructions: Before beginning the count, the agent makes the following announcements:

- a. A majority of the valid votes decides the election.
- b. The observers' duties include: to observe the count; to ensure the tally is accurate; and to question markings on ballots. The observers are also told that they may not touch the ballots.
- c. The party representatives may not stand or linger near the table, but they should be available if any questions arise concerning markings on the ballot.

- d. Any ballot that clearly reflects the voter's intent is counted in accordance with the apparent intention, even though the marking is unorthodox - for example, the voter makes a check, rather than an "x" or writes "yes" in a box; the mark appears within the outer box rather than the inner box; there are erasers in the box(es); or there are markings in more than one box. But a ballot in which the voter's intent is not clear is voided (see also [CHM 47.10](#)).
- e. Any ballot that identifies the voter in any way is voided.

The agent also provides instructions on the tallying procedures, and, certification upon completion of the tally and service of the tally.

- 47.8.3 Informal method:** After resolving the challenged ballots, the agent stands on the inside of the table, removes all of the ballots from the ballot box and unfolds them. As the agent unfolds the ballots s/he places them face side up in piles according to the preferences expressed. The observers stand on the other side of the table. When this process is finished, the agent counts out loud the different piles, displaying each ballot to the observers as it is being counted. Ballots are packaged according to their preference in piles of 50 (use paper clips or rubber bands). If any observer questions the accuracy of the tally, the pile is recounted. Each bundle is placed in separate piles in the presence of the observers.
- 47.8.4 Formal method:** Usually more than one agent works at a table when the formal procedure is used. As one or more agents unfold the ballots, another agent places them face down in piles according to their preference. Once the ballots are unfolded and separated, they are turned over. Ballots reflecting the same preference are tallied at the same table. The observers stand on the other side of the table. They may maintain tally sheets. In very large elections, an additional agent also maintains a tally sheet. The agent responsible for actually counting the ballots starts counting the ballots out loud, displaying each ballot to the observers as it is being tallied. A second agent stands next to the counting agent to verify the party for whom the ballot is cast and that the ballot does not contain any unusual markings that the counter may have missed. Ballots are packaged according to their preference in piles of 50 (use paper clips or rubber bands). If any observer questions the accuracy of the tally, the pile is recounted. Each bundle is placed in separate piles in the presence of the observers.
- 47.8.5 Verifying the tally:** Whether a formal or informal method is used, the tally is verified when the observers agree that each pile contains 50 ballots and the agent notes "50" on the ballot at the top of the pile and circles the number.

The bundle is placed in a pile with other bundled ballots reflecting that preference. The tallying procedure is continued in this fashion until all the ballots of that choice are counted. The final pile, which is usually other than an even multiple of 50, is counted and the figure is placed on the top of the first ballot and circled.

At the conclusion of the tally of a particular choice, the agent recounts the bundles of fifty as a final check of the accuracy of the figures. The entries on the tally sheet are completed, showing the choice tallied: i.e., "yes," "no," the name of the labor organization, "neither" or "none." Where there is only a sufficient number of agents to count one choice at a time, one of the agents guards the ballots not being counted. If there is only one agent, the uncounted ballots are sealed in a box until they are tallied.

When all of the ballots are counted, the agent completes the tally sheet, noting the votes cast for the various choices and the number of void ballots. The number of unresolved challenged ballots was entered on the tally sheet before the count. All of the counted ballots are secured with other election materials and maintained until after the Regional Director issues the appropriate certification.

47.9 Tallying mail ballots:

47.9.1 Overview: When counting mail ballots, whether cast in an all-mail ballot or mixed mail/manual election ([CHM 43](#)), the signature and the key number of the voter on the mail ballot envelope is checked initially against the name and number on the separate mail ballot eligibility list. If the envelope does not bear a signature, the mail ballot is declared void. The signature of a voter is presumed valid, absent a party raising an issue of forgery. Thus, the signature is not compared against any official records as a matter of uniform practice.

47.9.2 Timely receipt of mail ballots: Upon receipt in the Regional Office, all envelopes are date-stamped to establish the date of receipt. **Returned mail ballots are placed in a secure location, either in a "ballot box" that is sealed or in a locked drawer.**

Envelopes received after the close of business on the return date, but prior to the time set for the count, are kept separated from those timely received. If all parties agree to waive the deadline, such ballots are opened and counted or voided as appropriate. If the parties do not agree, the ballots are challenged. *U.S. Department of Health and Human Services, Social Security Administration District Office, Greenville, North Carolina, 36 FLRA 824 (1990).*

NOTE: The count of the ballots usually occurs in the Regional Office and is not always attended by representatives of the parties. [CHM 44.4](#) and [47.7.3](#). In such cases, the agent pre-arranges with the parties whether they will contact the region to challenge voters and resolved issues such as late received ballots. Any agreement regarding late received ballots must be confirmed in writing by fax. See also CHM 47.9.3.

- 47.9.3 Counting ballots in an all-mail ballot election:** Before counting the ballots in all-mail ballot elections, the returned ballots are checked against the eligibility list to verify that the voter who signed the envelope is an eligible voter in the election (see [CHM 43 - mail ballot elections](#)). As discussed in *CHM 47.9.1*, if the outer envelope is not signed, it is voided. After all of the ballots are checked against the eligibility list, the outer envelopes are removed at the same time. The inner secret ballot envelopes are commingled, opened, and the ballots removed. The ballots are tallied in the same manner as those cast in a manual ballot election.

As discussed above, the agent normally makes arrangements at the election agreement meeting to have a party representative to be available by phone if s/he cannot attend the count.

- 47.9.4 Counting ballots in a mixed mail/manual ballot election:** Returned mail ballots in a mixed mail/manual ballot election are checked against the mail ballot eligibility list and the manual ballot voting list before the ballot box is opened and any challenged ballots are discussed and “resolved.”

In mixed mail/manual ballot elections, the returned mail ballots are checked against the separate mail ballot eligibility list to verify that the voter who signed the envelope is an eligible voter in the election. The returned mail ballots are also checked against the manual ballot eligibility list to verify that voters who returned mail ballots did not also appear at the polls to vote. (The agent ensures the parties have deleted or annotated the names of voters who received mail ballots from the manual ballot eligibility list, but it is still a good practice to verify that the voter did not vote twice. If a voter appears at the polls also received a mail ballot, the agent follows the procedures discussed in [CHM 44.11](#).)

Once the mail ballots are checked in, the outer envelope is opened at the same time and in the same manner as the “resolved eligible” challenged ballots are opened. The outer return mail ballot envelope is maintained as part of the election materials. Returned mail ballots are commingled with ballots cast in the manual election at the same time as the “resolved eligible”

challenged ballots.

47.10 Construing ballot markings: As discussed in [CHM 47.8.2.1](#), when construing a ballot marking, the test is whether the intent of the voter is readily ascertained. If the intent is clear, despite unorthodox markings or erasures, the ballot is construed in accordance with the voter's intent. As a general rule, a ballot is valid if it contains a mark in only one of the possible choices and does not contain the voter's name or other form of identification. Conversely, a ballot is "void" if the intent of the voter is not readily ascertained. For example:

- a. Two or both of the possible choices are marked;
- b. Neither or none of the two or more possible choices is marked;
- c. "No" is written in the "Yes" square or "Yes" is written in the "No" square; or
- d. A name or other form of identification appears on the ballot.

If a ballot bears a name or other form of identification, the agent displays to the observers only that portion of the ballot on which the name or identification appears, taking special care not to reveal how the ballot is marked. Such ballots (or any other type of ballot which is declared void) are marked "Void" on the reverse side of the ballot, initialed by the parties, and retained in a separate grouping of such ballots.

The observers have the right to object to the interpretation given by the agent as to the manner in which a ballot is marked. If an objection is raised by one of the parties, the observers for all of the parties are afforded the opportunity to reach agreement in construing the voter's intent. Disputes involving the question of ballot validity are treated the same as a ballot challenge. The ballot is placed in a challenge envelope and treated as an unresolved challenged ballot and not as a void ballot. *General Services Administration, Region 5, Public Building Service, Chicago, Illinois, Case No. 50-13-31(RO), 2 Rulings on Requests for Review 469 (1976), Report on Ruling Number 59, 6 A/SLMR 747 (1976).*

NOTE: If a returned mail ballot or a challenged ballot is not sealed in a secret ballot envelope, it is not a void ballot. See [CHM 43.1.4](#) and [47.7.4](#).

- 47.11 Professional-nonprofessional elections:** In a self-determination election involving separate voting groups for professional and nonprofessional employees, i.e., voting groups (a) and (b) respectively, the ballots cast by the professional employees regarding Question 1 on the professional's ballot **are counted first** (see [Figure B34.2A](#)). Upon conclusion of the count, the results are entered on FLRA Form 40, Tally of Ballots for Professional Employees (see [FLRA Form 40](#)).

If a majority of the valid votes in voting group (a) plus challenged ballots, if any, are cast for inclusion in the same unit as the nonprofessional employees, the second half of FLRA Form 40, i.e., lines 10 through 18, **is not completed**. A vote for inclusion requires that the ballots of voting group (a) be combined (pooled) with the ballots cast by the nonprofessional employees in voting group (b). The votes cast by the professional employees under Question 2 (See [Figure B34.2A](#)) and by the nonprofessional employees for the same labor organization are tallied as one total. Similarly, votes cast against exclusive representation by both groups are also tallied as one total. The results of the combined count are entered on [FLRA Form 39](#), Tally of Ballots.

If the Tally of Ballots for Professional Employees indicates that a majority of the valid votes, plus challenged ballots, if any, were **not** cast for inclusion in the nonprofessional unit, the ballots in voting groups (a) and (b) are counted separately. The votes cast for or against the labor organization(s) appearing on the professional employees ballot, Question 2, are counted and the results entered on FLRA Form 40, lines 10 through 18. Similarly, after the count of the ballots in the voting group (b) is completed, the results are entered on FLRA Form 39, the title of which is modified to read, "Tally of Ballots For Voting Group (b)."

NOTE: To cast a valid vote in an election involving professionals and nonprofessionals, a professional employee are required to answer both questions on the ballot. The failure to follow the instructions contained on the ballot to answer both questions voids the ballot. Department of Housing and Urban Development, Unit II, Boston Area Office, Boston, Massachusetts, Case No. 31-4380 E.O. 1 Rulings on Requests for Review 161 (1971), Report on Ruling Number 40, 1 A/SLMR 626 (1971).

- 47.12 Other types of self-determination elections where votes are pooled:** As discussed in [CHM 28.15.4](#) and [28.15.5](#), separate ballots are used in self-determination elections involving different voting groups. In [CHM 28.15.5](#), self-determination elections were discussed using a scenario involving Union A that seeks to represent a large unit that includes a craft or functional group and Union B seeks to represent only the smaller craft or functional group of

employees. The craft or functional unit is referred to as voting group (a) and the larger, overall unit is referred to as voting group (b).

The ballots cast in voting group (a) (see [Figure 28.15D](#)) are counted first and the results entered on [FLRA Form 39](#), the title of which is modified to read, "Tally of Ballots for Voting Group (a)." If line 11 of the Tally indicates that a majority of the valid votes plus challenged ballots has been cast for Union B, the ballots in voting group (b) are counted separately. In the latter event, a separate Tally of Ballots is completed for voting groups (a) and (b) respectively on separate [FLRA Forms 39](#).

In the event that line 11 of the Tally of Ballots indicates that a majority of the valid votes plus challenged ballots has not been cast for Union B (see [Figure 47.12A](#) which sets forth an example of FLRA Form 39), the ballots of voting groups (a) and (b) are combined and counted. The votes cast for Union A in both voting groups (a) and (b) are then counted in favor of Union A (see [Figure 47.12B](#) which is a modified version of FLRA Form 39). The votes for the "Neither" choice in voting group (a) and the "No" choice in voting group (b) are counted as votes against exclusive recognition and entered on line 6. With respect to the votes cast for (Union B) in voting group (a), a special tallying procedure providing for the pooling of votes is utilized as follows: if the votes are pooled, the votes for the Union B are counted as part of the total number of valid votes cast but neither for nor against Union A which is seeking a more comprehensive unit. All other votes are accorded their face value. Accordingly, the votes cast for Union B in voting group (a) (taken from Figure 47.12A) is entered on line 6a of Figure 47.12B. Line 7 is modified also by adding "6a."

In the example used in [Figure 47.12B](#), the 244 votes cast for the Union A is based upon a pooling of the 25 votes cast for Union A in voting group (a) plus 219 votes cast in voting group (b) for Union A. Similarly, the 135 votes cast against exclusive recognition derives from the 5 "Neither" votes cast in (a) plus 130 "No" votes cast in (b). The total number of valid votes counted plus challenged ballots, 397, consists of the combined votes for Union A, the combined "neither" or "none" votes, and the number of votes cast for Union B. There were no unresolved challenged ballots.

- 47.13 Inclusion of unrepresented professional employees in existing unit of nonprofessional employees:** In an election in which the petitioner seeks to include unrepresented professional employees in a unit of nonprofessional employees which it currently represents, [FLRA Form 40](#) is used to tally the ballots. The procedure in tallying the ballots regarding Question 1 on the two part ballot is the same as discussed in [CHM 47.11](#). In the event that the

professionals vote for inclusion in the nonprofessional unit, tallying the second question on the ballot is not required. The vote reflects that the professional employees desire to be included in the existing nonprofessional unit currently represented by the petitioner. See [CHM 28.15.2](#) and [Figure 28.15B](#).

However, where a petitioner seeks to include the professional employees in the existing unit of nonprofessional employees, the petitioner must nevertheless represent the professional employees in a separate unit if a majority of the professional employees do not vote for inclusion in the existing unit. In that event, the results of the second question on the ballot are tallied and entered on FLRA Form 40, lines 10 through 18.

- 47.14 Inclusion of nonprofessional employees in existing unit of nonprofessional employees:** [FLRA Form 39](#) is used for tallying the results of an election in which the petitioner seeks to include unrepresented nonprofessional employees in an existing unit of nonprofessional employees currently represented by the petitioner. Since this type of election involves the use of the standard “Yes-No” ballot as set forth in [Figure B34.2F](#), or one involving the petitioner and one or more intervenors as set forth in [Figure B34.2G](#), FLRA Form 39 is appropriate for use as the Tally of Ballots. It is not necessary for the Tally of Ballots to reflect whether a majority of the nonprofessional employees voted for inclusion in the existing unit. Both the Election Agreement and the Notice of Election contain a specific provision that in the event that the petitioner is selected by a majority of those voting, their vote reflects their desire to be included in the existing unit represented by the petitioner, or by any intervenor, if selected (see [CHM 28.15.3](#) and [Figure 28.15C](#), [CHM 28.16](#) and [Figure 28.16](#)).
- 47.15 Severance elections:** *reserved*
- 47.16 Issuing the tally of ballots:** The agent is responsible for preparing the Tally of Ballots appropriate to the particular election involved, i.e., FLRA Form 39, 40 or 41. The entries are completed in the presence of the observers who participated in the counting of the ballots. In large elections, the various tallying sheets, if used, are collected, and the figures consolidated with respect to each of the choices on the ballot. All entries are made in ink.
- 47.16.1 Completing the tally form:** Particular care is taken when completing the Tally of Ballots. Service of a properly completed tally marks the beginning of the period for filing objections to the election. If the tally is completed improperly, a revised tally is issued and served on the parties and a new time period begins for filing objections. Note the following on the tally forms:

- a. Item #1 on all tally sheets: "Approximate number of voters" is based on the number originally submitted by the activity with the eligibility list;
- b. Item #2: "Void ballots" is the number of ballots voided by the parties because of irregular or inappropriate markings or the voter's choice is not clear; [CHM 47.10](#)
- c. Complete sections pertaining to the number of ballots cast for particular choices;
- d. Challenged ballots: enter the number of unresolved challenged ballots only; [CHM 47.7.4a](#)
- e. The agent completes the questions pertaining to whether a majority of valid ballots cast plus challenged ballots has or has not been cast for a particular choice. If none of the choices on the ballot receives a majority of the valid ballots cast plus challenged ballots, the word "not" is underlined in the sentence: "A majority of valid votes counted plus challenged ballots has not been cast for" The sentence is completed by inserting the phrase "any of the choices on the ballot." The tally reflects whether the election results are indeterminate because of determinative challenged ballots (§ 2422.27), the results require a runoff election (§ 2422.28) or the results are inconclusive (§ 2422.29). [CHM 47.17](#)

47.16.2 Signing the tally: After completing the tally, the agent dates and signs the original on behalf of the Regional Director. Each of the observers is requested to examine the Tally of Ballots for accuracy of entries and to read the concluding paragraph. Each observer signs the original Tally on behalf of the party represented. If an observer refuses to sign the Tally of Ballots, the agent takes a signed statement from the observer immediately. The statement reflects the reasons why the observer refuses to sign the tally. If it appears that the observer is alleging that objectionable conduct occurred, the agent also advises the observer of its representative's right to file objections to the election pursuant to § 2422.26. [CHM 50](#)

47.16.3 Service of the Tally: After the Tally of Ballots has been signed by the various observers, a copy of the tally is served immediately upon an authorized representative of each of the parties involved in the election. The method of service is recorded on the Tally. **Service is made in accordance with the parties' instructions as set forth in the Election Agreement.**

NOTE: Status as an observer on behalf of a party does not make that individual an agent of the party for purposes of service unless specifically designated by the party to receive the tally.

- 47.16.4 Refusal to accept service of the Tally:** The five (5) day period provided for in § 2422.26 is computed on the basis of actual rather than constructive furnishing of the tally of ballots. However, the failure or refusal of an authorized representative of a party to accept service of the tally of ballots in accordance with his/her own instructions as set forth in the Election Agreement does not operate to extend the period for filing objections.
- 47.17 Indeterminate results:** The results of an election may not be decisive. In such elections, the results are indeterminate. Indeterminate results occur in the following situations:
- 47.17.1 Determinative challenged ballots:** An election in any voting group or unit is indeterminate if the challenged ballots are sufficient in number to affect the results of the election. Determinative challenged ballots are challenges that are unresolved prior to the tally and sufficient in number after the tally to affect the results of the election (§ 2421.22).

When the parties to an election cannot agree on the eligibility of a challenged ballot voter, the challenged ballot is considered unresolved. The validity of unresolved challenged ballots is not decided at the tally. In order to calculate the number of votes needed for a majority, unresolved challenged ballots are assumed to be valid votes. An election may have indeterminate results if there are a sufficient number of unresolved challenged ballots.

When tallying unresolved challenged ballots, the number of votes needed to constitute a simple majority is determined by adding the total number of unresolved challenged ballots to the total number of valid votes cast. If any ballot choice receives a simple majority (50% plus 1, of the valid votes cast plus challenged ballots), the unresolved challenges are not determinative of the results of the election. The Tally of Ballots is issued reflecting the election results in Item #11 of [FLRA Form 39](#), Item #18 of [FLRA Form 40](#) and Item #41 of [FLRA Form 41](#). The following chart illustrates situations involving both determinative and nondeterminative challenged ballots. An explanation of each scenario follows.

Examples of Determinative and Nondeterminative Challenged Ballots

	A	B	C	D	E	F
	Not Det.	Not Det.	Not Det.	Det.	Det.	Det.
Votes cast for Union A	5	43	30	30	38	30
Votes cast for Union B	3	51	45	50	46	35
Votes cast against exclusive rep.	0	1	20	25	11	30
Valid votes cast	8	95	95	105	95	95
Challenged ballots	1	5	5	6	5	5
Valid votes plus challenged ballots	9	100	100	111	100	100

- A.** The total number of valid ballots cast plus challenged ballots is 9. Fifty percent (50%) of 9 is 4.5; thus, the majority is 5. The challenged ballot, therefore, is not determinative because Union A has obtained a majority of the valid ballots cast plus the challenged ballot.
- B.** The total number of valid ballots cast plus challenged ballots is 100. The 5 challenged ballots are not determinative because Union B received a majority of the valid ballots cast plus challenged ballots (100).
- C.** The total number of valid ballots cast plus challenged ballots is 100. No choice received a majority of the valid ballots cast plus challenged ballots. The challenged ballots are not determinative of the election because regardless of their resolution, they have no affect on the overall results. The total number of unresolved challenged ballots is added to the valid votes cast for each of the ballot choices and none of the resulting sums constitutes a simple majority. In this example, there will be a runoff election between Union A and Union B.
- D.** The total number of valid ballots cast plus challenged ballots is 111. No choice received a majority of the valid ballots cast plus challenged ballots. The challenged ballots are determinative: (1) there is no simple majority; and

(2) the sum of the total number of unresolved challenged ballots and the valid votes cast for **any of the ballot choices** is equal to or greater than a simple majority. The challenges are resolved to determine either (1) whether Union B received a majority of the valid votes cast or (2) whether a rerun or runoff election is required.

- E.** The total number of valid ballots cast plus challenged ballots is 100. No choice received a majority of the valid ballots cast plus challenged ballots. The challenged ballots are determinative. They are resolved to determine whether Union B receives a majority of the valid ballots cast plus challenged ballots, or whether the election results in a runoff election between Union A and Union B. See [CHM 47.17.3](#) - *indeterminate results requiring a runoff election*.
- F.** The total number of valid ballots cast plus challenged ballots is 100. No choice received a majority of the valid ballots cast plus challenged ballots. The 5 challenged ballots are determinative. Whether the election is rerun, due to a nullity, or runoff depends upon the disposition of some or all of the challenged ballots. If all of the challenged ballots were counted, and if they were cast for Union A, a runoff election is required between the 2 labor organizations. If none of the challenged ballots are opened, the election results are inconclusive, and the election is declared a nullity. A rerun election is required. See [CHM 47.17.4](#) - *inconclusive results requiring an election to be rerun*.

When the tally reflects that challenges are sufficient to affect the results of the election, see [CHM 47.16.1e](#) for completing the tally form.

NOTE: See [CHM 47.18](#) for a discussion about post-tally resolution of determinative challenged ballots and [CHM 49](#) for a discussion about investigating and resolving determinative challenged ballots in accordance with § 2422.27 when the parties are unable to resolve them post-tally.

- 47.17.2 Determinative challenged ballots in self-determination elections:** In any self-determination election involving two or more voting groups, if the challenges are determinative in the first voting group (a), the ballots in the other voting groups, such as (b), are not counted until the challenged ballots are resolved. Specifically, in a professional/nonprofessional election, the ballots cast by the nonprofessional employees in voting group (b) are not counted when the challenges are determinative in voting group (a). The same action is taken in a self-determination election involving a craft or functional voting group and a larger, overall voting group.

47.17.3 Indeterminate results requiring a runoff election: A runoff election is required in an election involving at least three (3) choices, one of which is “no union” or “neither,” when no choice receives a majority of the valid ballots cast. However, a runoff election may not be held until the Regional Director has ruled on objections to the election and determinative challenged ballots [§ 2422.28(a)]. See [CHM 48.1](#) for a discussion on runoff elections. Where the original election results in a runoff; i.e., no determinative challenged ballots and none of the 3 or more choices has received a majority of the valid votes plus challenged ballots, if any, Item #11 of [FLRA Form 39](#), Tally of Ballots, (and similar lines on other appropriate forms) is modified by adding the phrase in the blank space, “...any choice.”

NOTE: *There can be no runoff of an election in which there is only one labor organization on the ballot and the question on the ballot asks whether or not employees wish to be represented by the petitioning union.* A tie vote in this election results in a certification of results in that the petitioning union did not receive a majority of the valid ballots cast [§ 2422.25(c)]. *Department of Health, Education and Welfare, Division of Indian Health, Public Health Service, Intermountain Indian School Health Center, Case No. 61-1077, 1 Rulings on Requests for Review 79 (1970), Report on Ruling Number 19, 1 A/SLMR 614 (1970).* A decision of the Assistant Secretary remains in full force and effect unless the Authority revises or supersedes it by a decision under the Statute. *U.S. Army Corps of Engineers, Headquarters South Pacific Division, San Francisco, California, 39 FLRA 1445, 1450 (1991).*

47.17.4 Indeterminate results due to an inconclusive election: An inconclusive election is one where challenged ballots are not sufficient to affect the outcome of the election and one of the following occurs (§ 2422.29):

- a. The ballot provides for at least 3 choices, one of which is “no union” or “neither” and the votes are equally divided; or
- b. The ballot provides for at least 3 choices, the choice receiving the highest number of votes does not receive a majority, and at least two other choices receive the next highest and same number of votes; or
- c. When a runoff ballot provides for a choice between two labor organizations and results in the votes being equally divided; or

- d. When the Regional Director determines that there have been significant procedural irregularities.

In inconclusive elections based on “a through c” above, the tally reflects that the election is declared a *nullity* and the election is rerun providing for a selection from among the choices afforded on the previous ballot. See [CHM 48.2](#) for a discussion of rerun elections and [CHM 48.2.1 through CHM 48.2.6](#) for more information about inconclusive elections.

47.18 Post-tally party resolution: After the tally is served, the parties may voluntarily resolve some or all of the determinative challenged ballots while the region is investigating the determinative challenged ballots. **The region is not involved in helping the parties resolve challenges under this procedure.** The parties can meet on site after the tally has been certified and the Authority personnel have left. **The parties need not resolve all of the determinative challenges, just enough to render the number of remaining unresolved challenges nondeterminative.**

47.18.1 Role of agent:

- a. The agent makes sure parties understand consequences of their agreements.
- b. The agent **does not** get involved in helping the parties resolve challenges.
- c. The agent affords parties the opportunity to resolve challenges among themselves to eliminate determinative status of challenges.
- d. The agent **informs parties** that neither party can inquire as to how an employee voted.
- e. If the parties notify the agent that they may have reached agreement on the challenged ballot, the agent raises with the parties whether a particular position is eligible or ineligible (regardless of the parties’ agreement) when the agent has independent knowledge that brings into question the status.
- f. If the agent’s questions (based on independent knowledge) are not resolved to the satisfaction of the agent, the agent checks with the region before not allowing the challenge to be withdrawn or resolved.

47.18.2 The effect of the parties' agreement: The parties' agreement on challenged ballots is binding unless:

- a. If the parties agree the position is ineligible for inclusion in the unit, the position stays ineligible unless: i) there are changed circumstances, or ii) the position(s) were eligible in the first instance and constitute a residual unit. *FTC II*, 35 FLRA 576 (1990).
- b. If the parties agree that the position is eligible for inclusion in the unit, the position remains eligible unless: i) there are changed circumstances; or ii) the position(s) was ineligible in the first instance based on the section 7112(b)(1) through (7) statutory exclusions.

47.18.3 Post-tally resolution of determinative challenged ballots: are the same as resolving the challenges pre-tally except that the region is removed from the process.

- a. An individual party may withdraw a challenge. The Regional Director may approve such withdrawal, notwithstanding the objection of any other party.
- b. In the event objections to the election are also filed, the parties may continue to attempt to resolve the determinative challenged ballots informally unless the nature of the objections goes to the basis of the eligibility issues. For example, the objection alleges that the entire eligibility list was "bad" or inaccurate.
- c. In the absence of objections or when the objections do not involve eligibility issues, the parties may by agreement voluntarily withdraw their challenge to determinative challenged ballots under the following circumstances:
 - (i) The parties sign a written agreement acknowledging resolution of each challenge. It is not necessary to state the basis of the agreement, the result is sufficient.
 - (ii) There can be no evidence that the parties colluded on the eligibility of the challenged voters, or interfered with the challenged voter in any way.
 - (iii) In the agreement, the party(ies) waive their rights under the FLRA's rules to a Regional Director's Decision and Order, to file objections, to request review and to any right

to a hearing in the matter or to a FLRA decision. The agreement provides that upon its approval by the Regional Director, s/he may proceed to issue a revised tally and, when appropriate, a certification.

- 47.19 Procedures for securing determinative challenged ballots:** After the tally is served, determinative challenged ballots are placed in a large envelope or box in the presence of the parties. After the envelope/box is sealed, the agent and the parties' representatives sign and secure the envelope/box by signing across the tape so that their signatures extend across the tape and onto the envelope/box. Transparent tape is placed across each signature. The envelope is stored in the office safe or other secure place. The agent completes [Figure 47.18](#), tapes a copy to the face of the envelope/box and places the original in the case file. When more than one envelope/box is required, this procedure is repeated for each envelope/box used to store unresolved determinative challenged ballots.

Determinative challenged ballots are stored in this manner even if the parties state they intend to discuss post tally party resolution. If the Regional Director ultimately issues a Decision and Order on Determinative Challenged Ballots and any appeal is decided by the Authority, thereafter the region contacts representatives of the parties and affords them the opportunity to be present when the ballots are removed for counting ([CHM 49.8](#) and [49.9](#)).

